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# FEDERAL REGISTER

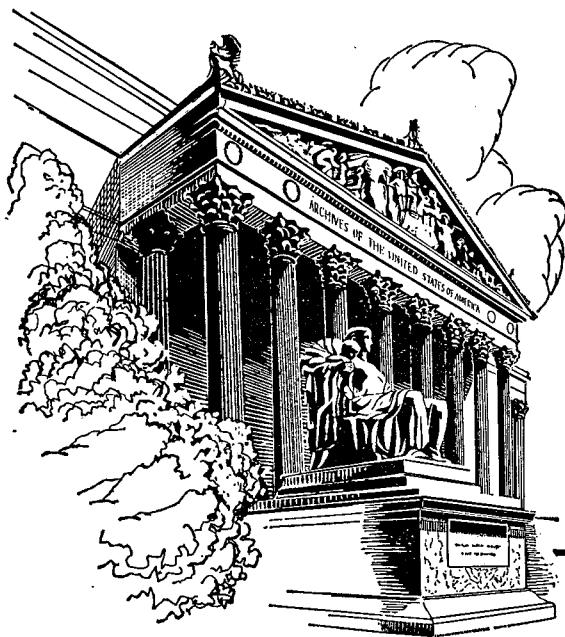
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PART II

United States Arms Control  
and Disarmament Agency

Procurement  
Regulations



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## RULES AND REGULATIONS

# Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

## Chapter 23—U.S. Arms Control and Disarmament Agency

Chapter 23 of Title 41 of the Code of Federal Regulations Procurement Regulations of the U.S. Arms Control and Disarmament Agency is added to read as follows.

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AUTHORITY: The provisions of this Part 23-1 issued under the authority of sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); secs. 31 and 41, 75 Stat. 631, 22 U.S.C. 2571 and 2581.

#### § 23-1.000 Scope of part.

This part describes the method by which the U.S. Arms Control and Disarmament Agency implements and supplements the Federal Procurement Regulations, and contains procedures which implement and supplement Part 1-1 of the Federal Procurement Regulations.

### Subpart 23-1.1—Introduction

#### § 23-1.100 Scope of subpart.

This subpart establishes Chapter 23 of the Federal Procurement Regulations System; and states its relationship to the Federal Procurement Regulations (FPR), and to other instructions governing contracting and procurement operations of the U.S. Arms Control and Disarmament Agency (ACDA).

#### § 23-1.101 Establishment of ACDA procurement regulations.

This subpart establishes the U.S. Arms Control and Disarmament Agency Procurement Regulations (ACDAPR), as prescribed by the Director of the Agency for the procurement of personal property and services (including construction) and the procurement of real property by lease. Section 31 of the Arms Control and Disarmament Act (22 U.S.C. 2571) authorizes and directs the Director of the Agency to exercise his powers in such a manner as to insure the acquisition of a fund of theoretical and practical knowledge concerning disarmament. To this end the Director is authorized and directed, under the direction of the President, to insure the conduct of research, development, and other studies in the field of arms control and disarmament, and to make arrangements (including contracts, agreements, and grants) for the conduct of research, development, and other studies in the field of arms control and disarmament by U.S. private or public institutions or persons. Limitations on the scope of the Director's authority are specified in section 31 of the Act.

#### § 23-1.102 Relationship of ACDAPR Chapter 23 to the FPR.

(a) Chapter 23 implements and supplements the FPR. Material published in the FPR, which has Government-wide applicability, becomes effective within ACDA upon the mandatory effective date of the particular FPR material.

(b) Implementing material is that which expands upon related FPR material. It will treat a similarly numbered portion of the FPR in greater detail or indicate the manner of compliance or deviation.

(c) Supplemental material is that for which there is no counterpart in the FPR.

(d) The absence of a corresponding part, subpart, and section in Chapter 23 indicates that the FPR is applicable as written.

#### § 23-1.103 Authority.

The U.S. Arms Control and Disarmament Agency Procurement Regulations are prescribed by the Director of the Agency pursuant to the Arms Control and Disarmament Act, and the Federal Property and Administrative Services Act of 1949, as amended.

#### § 23-1.104 Applicability.

Chapter 23 applies to all contracts for the procurement of personal property and services (including construction) and the procurement of real property by

lease, with U.S. private or public institutions and persons. Unless otherwise specifically stated, Chapter 23 does not apply to grants.

#### § 23-1.105 Exclusions.

Certain ACDA policies and procedures within the scope of Chapter 23 may nevertheless be excluded when authorized by the Director. These exclusions include the following categories:

(a) Subject matter which bears a security classification.

(b) Policies or procedures which are expected to be effective for a period of less than 6 months.

(c) Policies or procedures which are being instituted on an experimental basis for a reasonable period.

(d) Where speed of issuance is essential, and numerous changes in this Chapter 23 cannot be made promptly. These will be codified in Chapter 23 at the earliest practicable date, and in any event not later than 6 months from date of issuance.

#### § 23-1.106 Issuance.

##### § 23-1.106-1 Code arrangement.

Chapter 23 material published in the FEDERAL REGISTER will be published in cumulative form in Chapter 23 of Title 41 of the Code of Federal Regulations.

##### § 23-1.106-2 Publication.

All Chapter 23 material considered necessary or desirable for an understanding of basic and significant ACDA procurement policies and procedures by business organizations and other organizations or individuals interested in furnishing property or services to ACDA will be published in the FEDERAL REGISTER. Detailed instructions of interest primarily for internal agency guidance shall not be published.

##### § 23-1.106-3 Copies.

The FEDERAL REGISTER and Title 41 of the Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

#### § 23-1.107 Arrangement.

##### § 23-1.107-1 General plan.

The U.S. Arms Control and Disarmament Agency Procurement Regulations (ACDAPR) employ the same numbering system and nomenclature as the Federal Procurement Regulations and conform with FEDERAL REGISTER standards approved for the FPR.

##### § 23-1.107-2 Numbering.

(a) This Chapter 23 has been allocated to the U.S. Arms Control and Disarmament Agency for implementing, supplementing and deviating from the Federal Procurement Regulations, appearing as Chapter 1 of this Title 41 of the Code of Federal Regulations.

(b) Where Chapter 23 implements, or deviates from, a part, subpart, section, or subsection of the FPR, the implementing or deviating part, subpart, section, or subsection of Chapter 23 will be numbered and captioned to correspond to

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the pertinent part, subpart, section, or subsection of the FPR.

(c) Where Chapter 23 supplements the FPR, numbers in the group 50 to 99 will be assigned to the respective supplementing part, subpart, or section.

(d) Where the Agency determines that the subject matter contained in a part, subpart, section, or subsection of the FPR requires no implementation, the ACDAPR will contain no corresponding part, subpart, section, or subsection number and the subject matter as published in the FPR governs.

#### § 23-1.107-3 Citation.

ACDA procurement regulations will be cited in accordance with FEDERAL REGISTER standards approved for the FPR. Thus, the section, when referred to in divisions of the ACDAPR, should be cited as "§ 23-1.107-3 of this chapter." When this section is referred to formally in official documents, such as legal briefs, it should be cited as "41 CFR 23-1.107-3". Any section of the ACDA Procurement Regulations may be informally identified, for purposes of brevity, as ACDAPR followed by the section number, e.g., "ACDAPR 23-1.107-3".

#### § 23-1.108 [Reserved]

#### § 23-1.109 Deviation.

Deviation from the Federal Procurement Regulations and the ACDA Procurement Regulations shall be kept to a minimum and controlled as follows:

(a) Deviations in individual cases must be approved in advance by the Executive Director. This authority may not be redelegated. Deviations in classes of cases must be approved in advance upon request by the Executive Director. Requests for deviation (or in the case of a deviation affecting an individual contract signed in behalf of the Agency by the Executive Director, the memorandum for the record) shall cite the specific parts and sections or subsections of the FPR and ACDAPR from which it is desired to deviate, shall set forth the nature of the deviation, and shall give the reasons for the requested action.

(b) If a requested deviation is considered appropriate, approval will be accomplished as follows:

(1) Where the deviation affects an individual contract, written approval will be included in the contract file.

(2) Where the deviation applies to a class of cases under the FPR, necessary coordination with the General Services Administration will be accomplished on an expedited basis by the Executive Director, unless in the considered judgment of the Executive Director, circumstances preclude such joint effort, in which case he will notify the General Services Administration of the deviation.

(3) Deviations affecting a class of cases under ACDAPR will be presented to the Director for his approval.

(4) Such class deviations will become effective within the Agency upon approval by the Director and will be issued as part of the ACDAPR.

### Subpart 23-1.2—Definition of Terms

#### § 23-1.201 Definitions.

For the purposes of this chapter, the following terms have the meanings set forth in this subpart, unless otherwise indicated.

#### § 23-1.204 Head of the Agency.

The "head of the agency" means the Director or Acting Director of the U.S. Arms Control and Disarmament Agency.

#### § 23-1.205 Procuring activity.

The organizational element of ACDA which has responsibility to contract for the procurement of personal property and services (including construction) and the acquisition of real property by lease is the Office of the Executive Director.

#### § 23-1.206 Head of the procuring activity.

The "head of the procuring activity" within ACDA is the Executive Director.

#### § 23-1.250 ACDA.

"ACDA" means the U.S. Arms Control and Disarmament Agency.

#### § 23-1.251 Agency.

"Agency" means the U.S. Arms Control and Disarmament Agency.

#### § 23-1.252 Director.

"Director" means the head of the Agency.

### Subpart 23-1.3—General Policies

#### § 23-1.302 Procurement sources.

§ 23-1.302-3 Contracts between the Government and Government employees or business concerns substantially owned or controlled by Government employees.

Any exception, as described in § 1-1.302-3 of this title, must be supported by written findings and a determination signed by the Director.

#### § 23-1.317 Noncollusive bids and proposals.

The Executive Director is designated to make the determinations described in paragraph (d) of the Certificate of Independent Price Determination prescribed in § 1-1.317 of this title.

#### § 23-1.350 Execution of contracts.

Contracts, purchase orders, delivery orders, Government bills of lading, and other types of purchasing documents will be executed only by the Executive Director, the Chief of the Contracts Branch, or Contract Specialists acting within the scope of their delegated authority (See Part 23-51). They may also be executed by other officials holding valid written delegations or redelegations of procurement authority issued by the Director or other officer of the Agency designated by the Director in writing to make such delegations or redelegations. The approval of legal counsel as to form and legality will be required for contracts, and for other contractual instruments where specific legal questions arise.

#### § 23-1.352 Fraud against the Government and other violations of law.

(a) In the event procurement personnel have reason to believe there exists evidence of fraud against the Government or any other violation of law of any nature whatsoever in the procurement by formal advertising or by negotiation, or during the performance of any contract, they will prepare and forward a complete report through the Executive Director to the Office of the General Counsel for appropriate action.

(b) In case of possible violation of the antitrust laws, the report will be prepared in accordance with Subpart 1-1.9 of this title.

### Subpart 23-1.4—Procurement Authority and Responsibility

#### § 23-1.402 Authority of contracting officers.

(a) An employee binds the Government only when his actions are in accordance with authority actually granted to him. Contracting officers are agents of the Government and shall act in accordance with law, regulations including FPR and ACDAPR, other pertinent directives, and sound judgment, and within the limits of their prescribed duties and authorities.

(b) Contracting officers shall personally sign all contracts and modifications entered into by them (see § 23-1.104). Duplicate original signatures, including facsimile signatures reproduced from a master signed manually by the contracting officer, are valid and acceptable.

#### § 23-1.404-2 Designation.

Delegations and redelegations of authority are generally directive on specific positions, rather than specific individuals. When a specific position carries delegated or redelegated contracting authority, an individual appointed to such a position is, therefore, a contracting officer. Such appointments are normally made by means of administrative personnel actions. When an individual is designated as a contracting officer by an instrument other than a personnel action, a copy of the designating instrument shall be forwarded to the appropriate personnel office for inclusion in the file of the individual affected.

#### § 23-1.404-3 Termination of designation.

Designations shall be rescinded in the same manner upon termination of the assignment (but special assignments may be self-rescinding, as, for example, an assignment made in terms of the life of a specific contract, in which case a separate rescission instrument would not be required).

#### § 23-1.450 Contracting officers' representatives.

(a) Any properly qualified Government employee or group of employees, or a firm or individual under contract to the Government for this purpose, may be designated to act as the authorized representative of a contracting officer. Such designation shall be in writing and

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shall define the scope and limitations of the authorized representative's authority.

(b) A designation authorized by this § 23-1.450 may be made by instructions referring to particular contractual instruments or categories of instruments and may empower the authorized representative to take specified actions thereunder within the scope of the contract. In no event shall an authorized representative, by virtue only of his designation as such, be empowered to modify the terms of the contract or make a final decision under the Disputes clause of a contract.

#### § 23-1.451 Assignment of duties to contracting officers in other agencies.

A contracting officer may assign administration of a specific contractual instrument to another contracting officer, provided the assignee contracting officer's delegated authority permits, and the contractor shall be so notified. Such an assignment shall define the extent to which part or all of the original contracting officer's authority is transferred but shall not pass on to the successor any authorities which would exceed the limitations imposed on the successor by existing directives.

#### § 23-1.452 Availability of funds.

No contractual obligation may be incurred until the contracting officer has satisfied himself that adequate funds are available.

### PART 23-3—PROCUREMENT BY NEGOTIATION

#### Subpart 23-3.1—Use of Negotiation

Sec.	
23-3.100	Scope of subpart.
23-3.101	General requirements for negotiation.
23-3.102	Factors to be considered during the negotiation of contracts.
23-3.103	Dissemination of procurement information.
23-3.104	Disclosure of mistakes.
23-3.150	Contractor Selection Board.
23-3.150-1	Establishment of the Board.
23-3.150-2	Evaluation of proposals.
23-3.150-3	Notification to unsuccessful offerors.
23-3.150-4	Recommendation to the Director.
23-3.150-5	Restriction on disclosure of Contractor Evaluation Board Reports.

#### Subpart 23-3.2—Circumstances Permitting Negotiation

23-3.202	Public exigency.
23-3.202-50	Application.
23-3.204	Personal or professional services.
23-3.204-50	Application.
23-3.204-51	Limitations.
23-3.206	Purchases outside the United States.

#### Subpart 23-3.4—Types of Contracts

23-3.405	Cost-reimbursement type contracts.
23-3.405-5	Cost-plus-a-fixed-fee contract.
23-3.405-50	Cost-plus-award-fee contract.

#### Subpart 23-3.50—Solicitation of Proposals and Quotations

23-3.5001	Late proposals and modifications.
23-3.5002	Treatment of procurement information.

Sec. 23-3.5002-1 Restrictions on disclosure and use of data in proposals and quotations.

**AUTHORITY:** The provisions of this Part 23-3 issued under the authority of sec. 205 (c), 63 Stat. 390; 40 U.S.C. 486(c); sec. 302, 63 Stat. 393, 41 U.S.C. 252; sec. 304, 63 Stat. 395, 41 U.S.C. 254; sec. 307, 63 Stat. 396, 41 U.S.C. 257; sec. 1, 81 Stat. 54, 5 U.S.C. 552; sec. 41, 75 Stat. 631; 22 U.S.C. 2581.

#### Subpart 23-3.1—Use of Negotiation

##### § 23-3.100 Scope of subpart.

This subpart deals with the nature and use of negotiation as distinguished from formal advertising, as a means of procurement, and with limitations on that use.

##### § 23-3.101 General requirements for negotiation.

(a) Under section 31 of the Arms Control and Disarmament Act (22 U.S.C. 2571), the Director, in carrying out his responsibilities, is authorized "to make arrangements (including contracts, agreements, and grants) for the conduct of research, development, and other studies in the field of arms control and disarmament by U.S. private or public institutions or persons." This authority is initially exercised under the Federal Property and Administrative Services Act of 1949, as amended, and under the Federal Procurement Regulations issued by the General Services Administration pursuant thereto. Except under certain circumstances set forth in those regulations, Government contracts for supplies and services are required to be made only after formal advertising and competitive bidding. The purpose is to give all qualified persons an equal opportunity to compete for Government contracts; to avoid favoritism or collusion in the letting of contracts; and, most important of all, to increase the Government's chances of finding the particular organization or individual who will best supply the Government's needs for supplies or services, price, and other factors considered.

(b) For the same reasons, where formal advertising for bids is determined to be impracticable, as may be the case with Agency research contracts, the requirement for negotiated contracts resulting from competitive proposals obtains. The proposals must be obtained from all known qualified sources and the procurement opportunity synopsisized to assure maximum full and free competition consistent with the needs of the Government.

(c) Accordingly, the Agency normally procures research services by sending out a request for proposals to a number of possible sources ascertained to have qualifications in the particular area of service concerned. These requests for proposals are announced in the "United States Department of Commerce Synopsis of U.S. Government Proposed Procurements, Sales, and Contract Awards," in accordance with the provisions of 15 U.S.C. 637, for the information of any potential offeror. However, certain procurements need not be so announced, such as those of a classified nature,

those for services from an educational institution, and those for personal or professional services.

##### § 23-3.102 Factors to be considered during the negotiation of contracts.

Among those factors to be considered in the preparation of requests for proposals is the need for auditing of the contractor's records (see Subpart 1-3.8 of this title).

##### § 23-3.103 Dissemination of procurement information.

In addition to FPR requirements for publication of procurement opportunities, information on current and proposed research and study programs is available upon request.

##### § 23-3.104 Disclosure of mistakes.

(a) If the contracting officer has reason to believe that an offeror has made a mistake he shall obtain verification of the proposal or quotation from the offeror.

(b) Correction of mistakes after entry into force of a contract shall be made in accordance with the provisions of § 1-2.406-4 of this title to the extent applicable. The extraordinary contractual authority established by Public Law 85-804 (50 U.S.C. 1431-1435) is not available to the Agency for the correction of mistakes.

##### § 23-3.150 Contractor Selection Board.

##### § 23-3.150-1 Establishment of the Board.

A Contractor Selection Board, whose membership is approved by the Director, is established for each prospective contract for which competitive proposals are to be solicited.

##### § 23-3.150-2 Evaluation of proposals.

(a) In evaluating proposals, unless otherwise set forth in the Request for Proposal, the Board shall give primary and equal consideration to (1) the degree of initiative and imagination displayed, (2) the caliber and experience of the personnel involved, and (3) the soundness of the offeror's approach.

(b) After elimination of proposals on the basis of the foregoing, then price and other factors in relation to the work to be performed will be considered for purposes of final selection.

##### § 23-3.150-3 Notification to unsuccessful offerors.

As deliberations of the Board progress and offerors are definitely eliminated from further consideration, the Chairman shall make recommendations to the Contracting Officer (and supply him with the pertinent information) with respect to the notification of unsuccessful offerors who have been eliminated from consideration.

##### § 23-3.150-4 Recommendation to the Director.

After the Contractor Selection Board has completed its evaluation of all proposals received, the Board shall recommend in writing to the Director its selection of the proposed contractor to perform the work.

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**§ 23-3.150-5 Restriction on disclosure of Contractor Selection Board Reports.**

Because of the confidential nature of information supplied by the offeror(s) and of the evaluations contained in the Contractor Selection Board's report, the report shall not be made available to the public.

**Subpart 23-3.2—Circumstances Permitting Negotiation****§ 23-3.202 Public exigency.**

Pursuant to section 302(c) (2) of the Federal Property and Administrative Services Act (41 U.S.C. 252(c) (2)), purchases and contracts may be negotiated if: "the public exigency will not admit of the delay incident to advertising."

**§ 23-3.202-50 Application.**

Examples of circumstances when use of the authority cited in § 23-3.202 may be justified include the following:

(a) Specialized studies to support elements of arms control proposals being considered urgently for international negotiations.

(b) Development or production of verification equipment urgently needed to support obligations assumed by the United States under executive agreement or treaty.

**§ 23-3.204 Personal or professional services.**

Pursuant to section 302(c) (4) of the Federal Property and Administrative Services Act (41 U.S.C. 252(c) (4)), purchases and contracts may be negotiated if "for personal or professional services."

**§ 23-3.204-50 Application.**

(a) This authority shall be used when the following conditions have been satisfied:

(1) If personal services, they are required to be performed by an individual contractor in person (not by organization or other association) and are to be performed under Government supervision and paid for on a time basis.

(2) If professional services, they may be performed either by an individual person or by an association.

(3) Procurement of the services is authorized by law and is effected in accordance with the requirements of any such law.

(b) Under section 41(d) of the Arms Control and Disarmament Act (22 U.S.C. 2581), the Agency is authorized to: Procure services of experts and consultants or organizations thereof, including stenographic reporting services, as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 3109(b)), at rates not to exceed \$100 per diem for individuals, and to pay in connection therewith travel expenses of individuals, including transportation and per diem in lieu of subsistence while away from their homes or regular places of business, as authorized by section 5 of said Act, as amended (5 U.S.C. 5703): *Provided*, That no such individual shall be employed for more than 100 days in any fiscal year unless the President certifies that employment of such

individual in excess of such number of days is necessary in the national interest: *And provided further*, That such contracts may be renewed annually;

(c) 5 U.S.C. 3109(b), in turn, provides authority to procure by contract: The temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services.

**§ 23-3.205-51 Limitations.**

It is ACDA general policy to obtain personal services of experts and consultants by appointment rather than by contract. Contracts negotiated under other authority are not subject to the requirements and limitations of this § 23-3.204.

**§ 23-3.206 Purchases outside the United States.**

Section 31 of the Arms Control and Disarmament Act (22 U.S.C. 2571) limits the authority of the Agency to contract for the conduct of research, development, and other studies in the field of arms control and disarmament to U.S. private or public institutions or persons.

**Subpart 23-3.4—Types of Contracts****§ 23-3.405 Cost-reimbursement-type contracts.****§ 23-3.405-5 Cost-plus-a-fixed-fee contract.**

Unless expressly approved by the Director in the case of each contract, the fixed fee shall not exceed ten (10%) percent of the estimated cost of the contract, exclusive of fee.

**§ 23-3.405-50 Cost-plus-award-fee contract.**

(a) *Description*. The cost-plus-award-fee contract is a cost-reimbursement-type contract with incentive fee provision which includes:

- (1) A target cost;
- (2) A base fee commensurate with minimum acceptable performance;
- (3) Criteria against which the contractor's performance will be evaluated;
- (4) An additional adjustment to the base fee, not to exceed a stipulated maximum, which is awarded on the basis of the subjective evaluation by ACDA of contractor performance; and
- (5) Specific provision that the determination of fee adjustment shall not be subject to the contract article entitled "Disputes".

(b) *Application*. The cost-plus-award-fee contract is suitable for use when:

- (1) A cost-reimbursement-type contract is found necessary or particularly pertinent;
- (2) The work to be performed is such that specific quantitative or objective measurement is not feasible and effective incentive arrangements cannot be devised on the basis of cost or performance (see § 1-3.405-4 of this title).

(3) Agency procurement objectives will be advanced if the contractor is effectively motivated to exceptional performance; and

(4) Any added administrative effort and costs required to monitor and evalu-

ate performance are justified by the anticipated benefits.

(c) *Considerations of concept*. (1) The opportunity for increase in earned fees is intended to motivate the contractor to manage effectively the required work, to control costs, and to improve the timeliness, quality, and quantity of performance.

(2) The award fee should be earned by the contractor for exceptional performance, surpassing minimum acceptable levels and should be commensurate with the benefits accruing to the Agency from the contractor's performance. The contractual terms may generally obligate the contractor to devote a specified level of effort for a stated period of time to satisfy the various aspects of the scope of the work; it follows that the award of additional fee for exceptional performance in designated areas should be contingent upon an acceptable level of performance for all other contract requirements. Although determination of the amount of award fee is a unilateral one based on subjective evaluations, the decision may be aided by such quantifying devices as adjectival ratings, point systems or percentages of achievement. Ordinarily, the award fee adjustments will be increases only, and contract arrangements for decreases in base fee (e.g., if certain criteria or levels of performance are not met) must be carefully scrutinized prior to approval for use. Such arrangement must provide that the contractor will be informed of the reasons for decrease in fee, and will be given specific opportunity to submit information on his behalf prior to decision by the official responsible for fee adjustment.

(d) *Limitations*. (1) The cost-plus-award-fee contract shall not be used (i) in procurements in which all factors affected by the incentive (e.g., cost, delivery, or performance) can be measured or objectively evaluated, or (ii) where the contract amount, term of performance or anticipated benefits are insufficient to warrant the additional administrative effort or cost.

(2) The maximum fee, comprising base fee, award fee and any other incentive fee payable under the contract may not exceed the maximum fee prescribed by law or regulation for research and development, or for supply contracts.

**Subpart 23-3.50—Solicitation of Proposals and Quotations****§ 23-3.5001 Late proposals and modifications.**

(a) This section shall apply only to purchases in excess of \$2,500.

(b) Written requests for proposals shall contain the following provisions: Offerors using certified mail are cautioned to obtain a Receipt for Certified Mail showing a legible, dated postmark and to retain such receipt against the chance that it will be required as evidence that a late proposal was timely mailed.

(c) Proposals which are received in the office designated in the requests for proposals after the time specified for

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their submission are "Late Proposals". Unless a specified time for receipt of proposals is stated in the request for proposals, the time for such receipt shall be deemed to be the time for close of business of the office designated for receipt of proposals on the date stated in the request for proposals. Late proposals shall not be considered for award, except under the following circumstances:

(1) Only one proposal is received; or  
(2) Under the circumstances set forth in § 1-2.303 of this title permitting consideration of late bids if proven to have been timely mailed or timely filed with the telegraph company.

(d) When it has been determined that a late proposal will not be considered for award, the offeror shall be notified promptly of the fact.

(e) Late modifications shall be subject to the rules applicable to late proposals set forth in this section. The normal revisions of proposals by selected offerors occurring during the usual conduct of negotiations with such offerors are not to be considered as late proposals or late modifications.

(f) All the provisions of this section are equally applicable to late quotations.

#### § 23-3.5002 Treatment of procurement information.

##### § 23-3.5002-1 Restrictions on disclosure and use of data in proposals and quotations.

(a) (1) A proposal, whether solicited or unsolicited, may include data, such as a technical design or concept or financial and management plan, which the offeror does not want disclosed to the public for any purpose or used by the Government for any purpose other than evaluation of the proposal. If an offeror wishes so to restrict his proposal, he shall mark the title page with the following legend:

This data, furnished in connection with Request for Proposals No. \_\_\_\_\_, shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal; *Provided*, That if a contract is awarded to this offeror as a result of or in connection with the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction is contained in Sheets \_\_\_\_\_.

If proposal is unsolicited, delete "furnished in connection with Request for Proposals No. \_\_\_\_\_".

(2) The offeror shall mark each sheet of data which he wishes to restrict with the following legend:

Use or disclosure of proposal data is subject to the restriction on the Title page of this proposal.

Contracting Officers and other Agency personnel shall not refuse to consider any proposal merely because it or the data submitted with it is so marked. Those portions of the proposal and data which are so marked (except for information which is

also obtained from another source without restriction) shall be used only to evaluate the proposal and shall not be disclosed outside the Government without the written permission of the offeror. If it is desired to duplicate, use, or disclose the data of the offeror to whom the contract is to be awarded, for purposes other than to evaluate the proposal, the contract should so provide. (See Part 23-52 of this chapter for a description of "data" and, in general, for the policy, instructions, and contract clauses with respect to the acquisition and use of data.)

(b) Proposals of subcontractors which are included as part of a proposal submitted by a prime-offeror shall be marked as provided in paragraph (a) of this section if the subcontractor wishes so to restrict his proposal.

(c) The provisions in paragraphs (a) and (b) of this section are also applicable to quotations. In the case of a request for quotations, the legends in paragraph (a) of this section shall be appropriately modified.

### PART 23-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Sec.  
23-4.000 Scope of part.

#### Subpart 23-4.51—Unsolicited Proposals

23-4.5101 Definitions.  
23-4.5102 Policy.  
23-4.5103 Procedures.

**AUTHORITY:** The provisions of this Part 23-4 issued under the authority of sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and sec. 41, 75 Stat. 631, 22 U.S.C. 2581.

#### § 23-4.000 Scope of part.

This part implements and supplements the policies and procedures set forth in Part 1-4 of the Federal Procurement Regulations.

#### Subpart 23-4.51—Unsolicited Proposals

##### § 23-4.5101 Definitions.

An "unsolicited proposal" is a written offer to undertake research, development or studies in the field of arms control and disarmament submitted by any offeror solely on his own initiative and not in response to a specific request made by ACDA.

##### § 23-4.5102 Policy.

A limited exception to the general requirement of competition in Government procurement arises in connection with unsolicited proposals. When a proposal for services has been submitted by an offeror upon his private initiative, it might not be equitable for the Agency to seek competing proposals. Because the considerations here are equitable in nature, the determinations must depend on consideration of the facts of each case and the extent to which the inequity to the proposing party is so great that the Government may be limited in the method of procurement. Several guiding principles can be stated:

(a) An unsolicited proposal must be truly unsolicited, and not the result of formal or informal requests for proposals made by Agency representatives.

(b) An unsolicited proposal should not merely anticipate a particular research project. Thus, for example, an offeror reading the Congressional report of hearings on the Agency's appropriation and quickly submitting a proposal on a project which the Agency clearly contemplated undertaking by contract during the fiscal year in question, does not meet valid criteria governing unsolicited proposals.

(c) An unsolicited proposal should represent a considerable investment of time and effort by the offeror. Thus, in order to qualify for a contract negotiated without competition, an unsolicited proposal should be an unusual, detailed, original, thoroughly developed conception of a project, which could result in furthering the Agency's statutory responsibilities. (See § 23-3.5002-1 of this chapter for protection of proprietary data contained in proposals.)

#### § 23-4.5103 Procedures.

(a) Each unsolicited proposal shall be examined in detail, the facts evaluated in light of the equities involved, and documentation of the factors considered in such evaluation retained. Contracting for research, development or studies on the basis of unsolicited proposals may be undertaken only after the following steps are taken:

(1) The designated representative of the Bureau or Office most likely to sponsor the work by reason of its responsibilities, considers, coordinates, analyzes, and evaluates the proposal.

(2) If the unsolicited proposal is deemed to be worthy of sponsorship by the Bureau or Office head, he shall submit a memorandum to the Research Council (see 22 CFR 603.14) recommending that the research should be conducted under a contract.

(3) If the Research Council approves the proposal, it is referred to the Director for his authorization of negotiation of the contract.

(b) When an unsolicited proposal has been determined to be unacceptable, the Bureau or Office head will notify the offeror in writing of this fact and the reasons therefor.

### PART 23-7—CONTRACT CLAUSES

Sec.  
23-7.000 Scope of part.

#### Subpart 23-7.1—Clauses for Fixed Price Supply Contracts

23-7.100 Scope of Subpart.  
23-7.102 Clauses.  
23-7.102-1 Definitions.  
23-7.102-2 Changes.  
23-7.150 Materials.  
23-7.151 Government furnished property.  
23-7.152 Security.  
23-7.153 Excusable delays.  
23-7.154 Publication and release of information.  
23-7.155 Order of precedence.

#### Subpart 23-7.50—Clauses for Cost-Reimbursement-Type Contracts

23-7.5000 Scope of subpart.  
23-7.5001 Applicability.

Sec.	
23-7.5002	Clauses.
23-7.5002-1	Definitions.
23-7.5002-2	Changes.
23-7.5002-3	Limitation of cost.
23-7.5002-4	Allowable cost, fee and payment.
23-7.5002-5	Subcontracts.
23-7.5002-6	Litigation and claims.
23-7.5002-7	Publication and release of information.
23-7.5002-8	Materials.
23-7.5002-9	Government furnished property.
23-7.5002-10	Security.
23-7.5002-11	Order of precedence.

**AUTHORITY:** The provisions of this Part 23-7 are issued under secs. 31 and 41, 75 Stat. 631, 22 U.S.C. 2571 and 2581; and sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c).

#### § 23-7.000 Scope of part.

This part sets forth contract clauses, in addition to those prescribed in Chapter 1 of this title, to be used by the U.S. Arms Control and Disarmament Agency in the procurement of personal property and services.

#### Subpart 23-7.1—Clauses for Fixed Price Supply Contracts

##### § 23-7.100 Scope of subpart.

(a) This subpart sets forth contract clauses to be used in fixed price supply contracts and, to the extent appropriate, in fixed price contracts for research and development.

(b) As used throughout this subpart, the terms "fixed price contract" shall mean any contract (1) entered into either by formal advertising or by negotiation (other than small purchases negotiated under the authority of 41 U.S.C. 252(c)(3)); (2) for a stipulated set sum of money (with or without provision for price redetermination, escalation or other form of price revision); (3) covering the acquisition of supplies or services, or both.

##### § 23-7.102 Clauses.

##### § 23-7.102-1 Definitions.

###### (a) Clause:

###### DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term "head of the Agency", "Secretary" or "Director" means the Director of the U.S. Arms Control and Disarmament Agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Director.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer, and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his authority.

(c) Agency means that U.S. Arms Control and Disarmament Agency.

(d) Except as otherwise provided in this contract, the term "subcontracts" includes agreements for experts and consultants and purchase orders under this contract.

(b) Additional definitions may be included in the clause set forth in para-

graph (a) of this section to the extent they are consistent with the clause of this subpart.

##### § 23-7.102-2 Changes.

###### (a) Clause.

###### CHANGES

The Contracting Officer may at any time issue written directions requiring additional work or directing the omission of or variations in work covered by this contract and within the general scope thereof. If any such direction results in a change in the amount or character of the work provided for herein, an equitable adjustment shall be made in the contract price or delivery schedule (or both) and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change; *Provided, however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as modified.

(b) In the foregoing clause the period of "sixty (60) days" within which any claim for adjustment must be asserted may be varied, but in no case may the period be for less than 30 days or for more than 120 days.

##### § 23-7.150 Materials.

###### MATERIALS

(a) The term "Materials" as used herein includes: all writings representing the Contractor's documentary work in process, including but not limited to completed documents, working papers, drafts; all technical data (including but not limited to drawings, graphic or recorded matter) relating to uses, products, processes, patents and inventions; required for delivery to the Government under the contract. The Contractor shall identify and appropriately mark all data containing the Contractor's proprietary information which he is required to deliver to the Government under the terms of the contract.

(b) Requests for Materials to be supplied by the Agency to the Contractor, shall be made to the Contracting Officer and shall specify as complete identifying information as possible concerning title, author or issuing agency, date, serial number, security classification, or administrative control, and the like. Such requests shall also explain the Contractor's need for the Materials requested. All Materials supplied by the Agency to the Contractor (either as a result of a request made by the Contractor or supplied voluntarily by the Agency) and all reproductions thereof, except as may be otherwise authorized by the Contracting Officer, shall be returned at the time of submission of the final report, or at such earlier time as the Contracting Officer may specify, directly to the source from which such Materials were received by the Contractor unless the Contractor is otherwise directed by the Contracting Officer.

(c) Upon the completion or earlier termination of this contract, the Contractor shall, except as otherwise authorized by the Contracting Officer, deliver to the Agency all Materials that bear a security classification or administrative control which the Contractor had developed or reported during the conduct of the work, including all reproductions

thereof, and, unless otherwise specified by the Contracting Officer, copies of all other Materials which the Contractor has developed or reported during the conduct of the work or which the Contractor is required to deliver under other terms of this contract. It is understood and agreed that the Agency shall have the right to determine and specify which of such Materials bear, or should bear, a security classification or administrative control. The Contractor may delete, from any Materials delivered hereunder, references which contain or disclose proprietary information to which the Government is not entitled by law or by applicable provisions of this contract.

(d) All Materials pertaining to the substance of the work and covered by this clause shall be subject to inspection by the Agency through any representative or representatives designated by the Contracting Officer, at all reasonable times, and the Contractor shall supply proper and adequate facilities for such inspections and for enabling such representative or representatives to reproduce a reasonable number of copies of such Materials.

(e) Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the provisions of this clause in all subcontracts under this contract.

##### § 23-7.151 Government furnished property.

###### GOVERNMENT FURNISHED PROPERTY

(a) The Government reserves the right to furnish any property or facilities required for the performance of work under this contract. Except for books and publications, the Contractor shall not acquire any property whose cost of acquisition as a direct charge to the contract exceeds \$150 per item for use hereunder without the advance authorization of the Contracting Officer. Title to all property furnished by the Government or acquired by the Contractor at the direction of the Government (hereinafter referred to as "Government furnished property") for use by the Contractor in the performance of the contract, shall remain in the Government. Unless otherwise agreed, title to all property acquired by the Contractor under authorization from the Government for use in the performance of this contract shall pass to the Government upon acceptance of delivery of the property by the Contractor. Title to Government furnished property shall not be affected by incorporation into or attachment to any property not owned by the Government, nor shall Government furnished property lose its identity as personalty by reason of its affixation to any realty.

(b) The delivery or performance dates for the supplies or services to be furnished to the Contractor under this contract are based upon the expectation that Government furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the times stated in the contract or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) Except for Government furnished property furnished "as is", in the event the Government furnished property is received

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by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(d) The Contractor shall maintain and administer in accordance with sound industrial practice, a program for the maintenance, repair, protection, and preservation of Government furnished property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government furnished property.

(1) The Contractor shall not be liable for any loss of or damage to the Government furnished property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) (i) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, or (ii) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (a) above, (A) to maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection, and preservation of Government furnished property as required by this clause, or (B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under this clause.

(2) Upon the happening of loss or destruction of or damage to the Government furnished property, the Contractor shall notify the Contracting Officer thereof, and shall take all reasonable steps to protect the Government furnished property from further damage. The Contractor shall make repairs and renovations of the damaged Government furnished property, or take such other action, as the Contracting Officer directs.

(e) The Government shall at all reasonable times have access to the premises where any of the Government furnished property is located.

(f) Nothing contained in this clause shall be deemed to alter or affect the provisions contained in the clause of this contract entitled "Security" or to derogate from the Contractor's responsibilities thereunder.

#### § 23-7.152 Security.

##### SECURITY

(a) In the performance of the work under this contract, the Contractor shall be responsible for safeguarding classified information and protecting against sabotage,

espionage, loss and theft, the classified documents, materials, equipment, processes, as well as such other material of high intrinsic or strategic value as may be in the Contractor's possession in connection with the performance of work under this contract.

(b) The Contractor agrees to conform to the security procedures which will be furnished by the Agency and which are predicated upon the Atomic Energy Commission's Security Regulations as may be modified by the Agency. The cost of physical changes to the Contractor's facilities required by such Contractor compliance beyond the normal practice of the Contractor under his contracts and not ordinarily charged as an indirect expense under his established accounting procedures will be the subject of separate negotiation, and a direct charge to this contract upon agreement. A change in security regulations and requirements made applicable to this contract subsequent to the effective date of the contract will be deemed a change in the amount or character of the work under the clause of this contract entitled "Changes."

(c) The Contractor shall not permit any individual to have access to classified information until notified by the Agency that the individual has been authorized access to classified information by the Agency as needed in the performance of duties under the contract.

(d) The disclosure by any officer, agent or employee of the Contractor or of any subcontractor to any unauthorized person, of classified information relating to this contract; or to performance hereunder, may result in criminal prosecution under the provisions of the Espionage Act, the Atomic Energy Act, or under other laws of the United States.

#### § 23-7.153 Excusable delays.

(a) The following clause shall be used in fixed-price-type contracts, where appropriate.

##### EXCUSABLE DELAYS

Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: Acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (i) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (ii) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (iii) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, shall

make an equitable adjustment in the contract price or delivery schedule (or both), in accordance with the procedures of the Changes clause of this contract, subject to the rights of the Government under the termination provisions of this contract.

#### § 23-7.154 Publication and release of information.

##### PUBLICATION AND RELEASE OF INFORMATION

(a) It is agreed that the Contractor shall have the right to release and to publish unclassified information and subject data resulting from performance under this contract, subject to the limitations expressed below. It is further agreed that the Contractor may publish or release information and subject data only after he has requested in writing and obtained the written consent of the Contracting Officer to such publication or release of information and subject data. The Contracting Officer shall not refuse his consent to such publication or release unless the exceptions to the requirement for public disclosure in the Freedom of Information Act, 5 U.S.C. 552, would bar such publication or release by the Government.

(b) The Contractor also agrees that, for a period not to exceed 3 years following completion, expiration, or termination of this contract, the form of attribution by him of Agency support in any such publication or release shall be determined by the Contracting Officer prior to publication or release.

(c) The Contractor shall give prompt advance notice to the Contracting Officer of any plan for the publication, distribution or sale of any material or manuscript embodying subject data hereunder.

(d) The consent of the Contracting Officer shall not be required for publication or release of information of subject data or substantial portions thereof, delivered under this contract and made available by the Agency to the general public for inspection, and copying under the Freedom of Information Act. The Contracting Officer shall notify the Contractor in writing of such availability as soon as practicable. The Contractor shall not thereafter be required to give notice of publication but he shall remain subject to the obligation of seeking consent to the form of any attribution for the agreed period. The consent of the Contracting Officer shall not be required for publication by the Contractor of his own proprietary data furnished to the Government under a confidential relationship.

#### § 23-7.155 Order of precedence.

##### ORDER OF PRECEDENCE

In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) Statement of Work (Article I); (b) general contract provisions; and (c) the other provisions of the contract whether incorporated by reference or otherwise.

#### Subpart 23-7.50—Clauses for Cost-Reimbursement-Type Contracts

##### § 23-7.5000 Scope of subpart.

This subpart sets forth clauses to be used in cost-reimbursement-type contracts.

##### § 23-7.5001 Applicability.

As used throughout this subpart, the term "cost-reimbursement-type contract" shall mean any contract which (a) is entered into on a cost, cost-sharing, cost-plus-a-fixed-fee, cost-plus-incentive-fee, or cost-plus-award-fee basis.

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## § 23-7.5002 Clauses.

## § 23-7.5002-1 Definitions.

Insert the clause set forth at § 23-7.102-1. Additional definitions may be included in such clause: *Provided*, They are not inconsistent with such clause or the provisions of this subpart.

## § 23-7.5002-2 Changes.

## (a) Clause:

## CHANGES

The Contracting Officer may at any time issue written directions requiring additional work or omission of or variations in work covered by this contract, and within the general scope thereof. If any such direction results in a change in the amount or character of the work provided for herein, the parties shall agree upon appropriate adjustment in the delivery schedule or estimated time required for performance under this contract as well as in the estimated costs as provided in the clause of this contract entitled "Limitation of Cost" and in the fixed fee payable as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment", and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt of the notification of change: *Provided, however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as modified.

(b) (1) The period of "sixty (60) days" within which any claim for adjustment must be asserted by the Contractor may be varied, but in no case may the period be for less than 30 days or for more than 120 days.

(2) The terms "fixed fee" in the foregoing clause may be omitted or varied to read "fee," "incentive fee," "award fee," or otherwise amended as may be appropriate.

(3) The title of the clause "Allowable Cost, Fixed Fee and Payment" may be amended to reflect the title of the clause actually included in the contract.

## § 23-7.5002-3 Limitation of cost.

## (a) Clause:

## LIMITATION OF COST

(a) It is estimated that the total costs of the Government, exclusive of any fixed fee, for the performance of this contract, will not exceed \_\_\_\_\_. The Contractor agrees to use its best efforts to perform the work specified in the Statement of Work (Article I), and all obligations under this contract, within such estimated costs. If at any time, owing to the addition of new work hereunder or otherwise, the Contractor has reason to believe that the total costs to the Government, exclusive of any fixed fee, for the performance of this contract will be substantially greater or less than the estimated costs then in effect under this contract, the Contractor shall promptly notify the Contracting Officer in writing to that effect, giving the revised estimate of such total costs.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated costs

set forth above, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated costs set forth above, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated costs have been increased and shall have specified in such notice revised estimated costs which shall thereupon constitute the estimated costs of performance of this contract. When and to the extent that the estimated costs set forth above have been increased in the foregoing manner, costs incurred prior to such increase, though in excess of the previous estimated costs shall be allowable to the same extent as if such costs had been incurred after such increase.

(c) Written directions issued pursuant to the clause of this contract entitled "Changes" shall not be considered an authorization to the Contractor to exceed the estimated cost hereinabove set forth in paragraph (a) in the absence of a statement in any such written direction, or other contract amendment, increasing the estimated cost of this contract.

(d) It is understood and agreed that the Government reserves the right to furnish the Contractor with equipment and facilities necessary for the performance of the work.

(b) The clause set forth in paragraph (a) of this section shall be inserted in all cost-reimbursement-type contracts. The terms "fixed fee" in the clause may be omitted or varied to read "fee," "incentive fee," "award fee," or otherwise amended as may be appropriate.

## § 23-7.5002-4 Allowable cost, fee and payment.

## (a) Clause:

## ALLOWABLE COST, FIXED FEE, AND PAYMENT

(a) For the performance of this contract, the Government shall pay to the Contractor:

(1) The cost thereof (hereinafter referred to as "allowable costs") determined by the Agency to be allowable in accordance with—

(i) Subpart 1-15.2 of the Federal Procurement Regulations in effect on the date of this contract: *Provided, however*, That unallowable costs shall include but not be limited to the following items:

Overtime or shift premiums not reasonably or properly allocable to the contract work unless it will result in lower overall cost to the Government;

Equipment purchased as direct costs to the contract without prior approval of the Contracting Officer;

*And provided further*, That cost for air transportation will normally be allowed at less than first class rates only;

(ii) The terms of this contract; and

(2) A fixed fee in the aggregate amount of \_\_\_\_\_.

If additional tasks, calling for an increase in the total level of effort under this contract, should be issued and agreed to, the amount of the fee for each such additional project shall be the mutually agreed by the parties and set forth in a written amendment to this contract.

(b) Once each month, the Contractor shall submit to the agency, in such form and reasonable detail as the Contracting Officer may require, an invoice or public voucher supported by a statement of costs incurred by the Contractor in the performance of this contract and claimed to constitute allowable costs. Each voucher shall show under each category of cost allocation both the amount currently billed and the cumulative costs for the category.

(c) Promptly after receipt of each invoice or voucher, the Agency shall review the document to the extent deemed necessary

and appropriate, and authorize payment to be made of the approved amount. Payment of fee shall be made to the Contractor in monthly installments in the same proportion to the total fee as the associated month's costs bear to the total estimated costs: *Provided, however*, That after payment of eighty-five percent (85%) of the fee is made, further payment on account of such fee shall be withheld until final payment is made as provided in paragraph (e) of this clause.

(d) At any time or times prior to final payment under this contract the Contracting Officer may have invoices or vouchers and statements of costs audited by Government auditors. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found, on the basis of such audit, not to constitute allowable costs.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "final invoice" or "final voucher", and upon compliance by the Contractor with all provisions of paragraphs (f) and (g) below, the Agency shall, after such audit as it considers necessary and appropriate, promptly pay to the Contractor any balance of allowable costs due and any part of the fixed-fee which has been withheld pursuant to paragraph (c) above or otherwise not paid to the Contractor. The final invoice or voucher shall be submitted by the Contractor promptly.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts may be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; *Provided*, That such claims are not known to the Contractor on the date of the execution of the release: *And provided further*, That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) Claims, for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including

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reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) Notwithstanding the foregoing provisions of this clause, and pending the establishment of an actual overhead rate as agreed upon by the parties for the period covered by the performance of this contract, the Contractor shall be reimbursed for allowable indirect costs under this contract at billing rates acceptable to the Contracting Officer. At such time as the actual overhead rate has been established as provided above, an appropriate adjustment shall be made and the final payment made pursuant to paragraph (e) of this clause shall reflect such adjustment including, if appropriate, any repayment that may be due and owing from the Contractor to the Government. A failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(b) Except as provided in paragraph (c) of this section, the clause set forth above shall be inserted in all cost-reimbursement-type research and development contracts. In the clause the term "fixed fee" may be omitted or varied to read "fee," "incentive fee," or "award fee," or otherwise modified as may be appropriate. The amount of agreed fixed fee is to be set forth in full. Paragraph (g) of the clause set forth in paragraph (a) of this section may be varied to take into account the contractor's established billing procedures.

(c) In the case of cost-sharing contracts or, where determined by the Contracting Officer to be appropriate, of cost-reimbursement-type contracts without fee—

(1) Insert the following paragraph in lieu of paragraph (c) of the clause set forth above in paragraph (a) of this section, except that if the contract does not provide for cost sharing, delete the parenthetical references to the Government's share—

(c) Promptly after receipt of each invoice or voucher, the Agency shall review the document to the extent deemed necessary and appropriate, and authorize payment to be made of the approved amount. After payment of an amount equal to eighty percent (80%) of (the Government's share of) the total estimated cost of performance of this contract set forth in the clause entitled "Limitation of Cost", further payment on account of allowable cost shall be withheld until a reserve of five (5%) percent of (the Government's share of) such total estimated cost shall have been set aside.

(2) Delete paragraph (a) (2) and the words "fixed fee" from paragraphs (a) or (e) of the clause set forth in paragraph (a) of this section. Amend paragraph (a) (1) (i) of the clause to reflect Subpart 1-15.3 when the contractor is an educational institution.

(3) In contracts which provide for cost sharing, change paragraph (a) of the clause set forth in paragraph (a) of this section as follows:

(a) For the performance of this contract, the Government shall pay to the Contractor:

(1) The cost thereof (hereinafter referred to as "allowable costs") determined by the Agency to be allowable in accordance with—

(i) Subpart 1-15.2 of the Federal Procurement Regulations in effect on the date of this contract; *Provided, however, That*

unallowable costs shall include, but not be limited to the following items:

Overtime or shift premiums not reasonably or properly allocable to the contract work unless it will result in lower overall cost to the Government;

Equipment purchased as direct costs to the contract without prior approval of the Contracting Officer;

*And provided further, That cost for air transportation will normally be allowed at less than first-class rates only; and*

(ii) the terms of this contract.

(d) In the clause paragraph (c) set forth in paragraph (c) (1), of this section, the percentage to be held in reserve may be varied as appropriate but in no case may it be less than five (5%) percent or more than ten (10%) percent.

(e) (1) The title of the clause set forth in paragraph (a) of this section shall be changed to "Allowable Cost and Payment," where appropriate.

(2) Other modifications to the clause set forth in paragraph (a) of this section may be made as appropriate to reflect the proper fee arrangement (such as incentive fee) concluded between the Government and the Contractor.

#### § 23-7.5002-5 Subcontracts.

##### SUBCONTRACTS

(a) The Contractor shall not enter into any contractual undertaking with a third party, including individuals utilized by the Contractor as consultants (but excluding individuals serving or to serve as regular employees of the Contractor and agreements for the acquisition of office supplies that are expended in the performance of the contract) for the performance in whole or in part of any of the work under this contract without the prior consent of the Contracting Officer, which consent shall not be unreasonably withheld.

(b) The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer required by this paragraph.

(c) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(d) Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to those contained in this clause in all subcontracts under this contract.

#### § 23-7.5002-6 Litigation and claims.

(a) Clause:

##### LITIGATION AND CLAIMS

The Contractor shall give the Contracting Officer immediate notice in writing of any action filed against the Contractor arising out of the performance of this contract and of any claim (excluding billings by subcontractors or consultants for duly contracted services rendered in the performance of this contract) against the Contractor the cost and expense of which is allowable under the clause entitled "Allowable Cost, Fixed Fee and Payment". Except as otherwise directed by the Contracting Officer in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor, with re-

spect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim, shall effect at the Contracting Officer's request an assignment and subrogation in favor of the Government of all the Contractor's right and claims (except those against the Government) arising out of any such action or claim against the Contractor, and, if required by the Contracting Officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or take charge of, any action. If the settlement or defense of an action or claim against the Contractor is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith, and in such event the defense of the action shall be at the expense of the Government: *Provided, however, That the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence for reasons other than the refusal of an insurer to issue a policy which was required by Contracting Officer's direction.*

(b) In the clause set forth in paragraph (a) of this section, the title of the clause "Allowable Cost, Fixed Fee and Payment" may be amended as appropriate.

#### § 23-7.5002-7 Publication and release of information.

Insert the clause set forth in § 23-7.154 where the use of the clause is appropriate.

#### § 23-7.5002-8 Materials.

Insert the clause set forth in § 23-7.150 where use of the clause is appropriate.

#### § 23-7.5002-9 Government furnished property.

Insert the clause set forth in § 23-7.151 where use of the clause is appropriate, with such modification as may be necessary to reflect its inclusion in a cost-reimbursement-type contract.

#### § 23-7.5002-10 Security.

Insert the clause set forth in § 23-7.152 where use of the clause is appropriate.

#### § 23-7.5002-11 Order of precedence.

Insert the clause set forth in § 23-7.155 where use of the clause is appropriate.

### PART 23-51—DELEGATIONS OF PROCUREMENT AUTHORITY

Sec.

23-51.000 Scope of part.

#### Subpart 23-51.1—General

23-51.101 Delegation.

#### Subpart 23-51.2—Delegations

23-51.201 The Executive Director.

23-51.202 Chief of the Contracts Branch.

23-51.203 Contract Specialist.

23-51.204 Library.

23-51.205 General Services.

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**AUTHORITY:** The provisions of this Part 23-51 are issued under sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); sec. 302, 63 Stat. 393, 41 U.S.C. 252; sec. 304, 63 Stat. 395, 41 U.S.C. 254; sec. 307, 63 Stat. 396, 41 U.S.C. 257; and sec. 41, 75 Stat. 631, 22 U.S.C. 2581.

#### § 23-51.000 Scope of part.

This part sets forth the delegations of authority to make findings and determinations, to negotiate, execute, award, and administer contracts, interagency agreements, purchase orders, other contractual arrangements and grants, hereinafter referred to as "contracts", unless otherwise stated.

### Subpart 23-51.1—General

#### § 23-51.101 Delegation.

(a) Except as otherwise provided by law, regulation, or specific memoranda of delegation, the authority of the Director of the U.S. Arms Control and Disarmament Agency to make findings and determinations, to negotiate, execute, award, and administer contracts for the acquisition of personal property and services (including construction) and the acquisition of real property by lease, is hereby delegated to those officials designated in Subpart 23-51.2 of this part, and (unless otherwise stated) to any official designated to act for one of those enumerated during the absence or incapacity of the latter, subject to the specific limitations stated in this Part 23-51.

(b) Unless otherwise limited in this Part 23-51, the contracting officers named in Subpart 23-51.2 of this part may designate one or more qualified Government officials to act as their authorized representatives, and authority is hereby delegated to such officials to administer the performance of work required by the contracts. Designations will be in writing and will specifically state the scope and limitations of the designee's contractual authority which must be within the scope of authority possessed by the designating Contracting Officer. The signed original or duplicate original of such delegations of authority shall be retained in the files for examination and a copy given to the contractor.

(c) When exercising the authority contained in this Part 23-51, the designated procurement official is identified as the Contracting Officer and will function within the limits prescribed by law, Federal Procurement Regulations, Procurement Regulations of the U.S. Arms Control and Disarmament Agency and all applicable provisions of Executive orders, regulations, and directives which are now in effect or which may be issued hereafter by competent authority.

(d) The Executive Director is designated as the chief officer responsible for procurement. In collaboration with the General Counsel or his designee, he shall formulate procurement policy for the Director's approval and within the policy approved by the Director shall prescribe standards and procedures for the negotiation, award and administration of contracts.

### Subpart 23-51.2—Delegations

#### § 23-51.201 The Executive Director.

(a) To the Executive Director is delegated the following authority:

(1) Subject to availability of funds, to enter into contracts or contract modifications which will not require the expenditure of more than \$1 million for the acquisition of property or services following formal advertising.

(2) To make findings and determinations required for the negotiation of individual contracts under the following paragraphs of 41 U.S.C. 252(c):

(i) Paragraphs (2) through (10), inclusively;

(ii) Paragraph (14).

(3) To make class findings and determinations required for the negotiation of contracts under 41 U.S.C. 252(c) (10).

(4) Subject to availability of funds, to enter into negotiated contracts for the acquisition of property or services, and modifications of any kind to such contracts, which will not require the expenditure of more than \$1 million either for an individual contract or for a contract modification.

(5) To appoint ordering officers under any contract who shall be empowered to place orders, request special responses or issue technical directions, within the agreed scope of any such contract.

(6) To make final decisions under the Disputes clause contained in any contract, and to terminate the contract, without regard to the total amount of funds in dispute.

(7) To make determinations required by 41 U.S.C. 254(b), as to the estimated cost of, and fees to be paid under, cost-plus-a-fixed-fee contracts.

(8) To make determinations required by 41 U.S.C. 254(b), that the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract is likely to be less costly than other methods or that it is impracticable to secure property or services of the kind and quality required without the use of a cost or cost-plus-a-fixed-fee contract or an incentive-type contract.

(9) To make the determination under 41 U.S.C. 253(b), that it is in the public interest to reject all bids.

(10) The determination required by 41 U.S.C. 255(c) that the making of advance payments would be in the public interest.

(11) The determination required by § 1-3.807-3(b) of Chapter 1 of this title with respect to waiving a requirement for the submission of cost or pricing data and the certification thereof.

(12) To make interagency agreements, which will not require the expenditure of more than \$1 million, under the provisions of section 601 of the Economy Act of 1932, 31 U.S.C. 686, or any other enabling legislation, for the acquisition of property or services.

(13) To determine, as required by § 23-52.104-1(b), that a contractor may be permitted to obtain title to a subject discovery or invention under the Patent clause set forth in § 23-52.104-2.

(b) The Executive Director is hereby delegated the authority to make grants (without limitation as to type and including grants in aid) under 22 U.S.C. 2571 or, where appropriate, under 42 U.S.C. 1891, which will not require the expenditure of more than \$1 million.

(c) Pursuant to the provisions of § 1-12.805 of Chapter 1 of this title, the Executive Director is hereby appointed Deputy Contract Compliance Officer for purposes of Equal Opportunity in Employment.

#### § 23-51.202 Chief of the Contracts Branch.

(a) To the Chief of the Contracts Branch is delegated the following authority:

(1) Subject to availability of funds, to enter into contracts or contract modifications which will not require the expenditure of more than \$500,000 for the acquisition of property or services following formal advertising.

(2) To make findings and determinations required for the negotiation of individual contracts under the following paragraphs of 41 U.S.C. 252(c):

(i) Paragraphs (2) through (10), inclusively;

(ii) Paragraph (11), provided that the contract will not require the expenditure of more than \$25,000.

(iii) Paragraph (14).

(3) To make class findings and determinations required for the negotiation of contracts under 41 U.S.C. 252(c) (10).

(4) Subject to availability of funds, to enter into negotiated contracts for the acquisition of property or services, and modifications of any kind to such contracts, which will not require the expenditure of more than \$500,000 either for an individual contract or for a contract modification.

(5) To appoint ordering officers under any contract who shall be empowered to place orders, request special responses, or issue technical directions, within the agreed scope of any such contract.

(6) To make final decisions under the Disputes clause contained in any contract, and to terminate the contract, without regard to the total amount of funds in dispute.

(7) To make determinations required by 41 U.S.C. 254(b) as to the estimated cost of, and fees to be paid under, cost-plus-a-fixed-fee contracts.

(8) To make determinations required by 41 U.S.C. 254(b) that the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract is likely to be less costly than other methods or that it is impracticable to secure property or services of the kind and quality required without the use of a cost or cost-plus-a-fixed-fee contract or an incentive-type contract.

(9) To make the determination under 41 U.S.C. 253(b) that it is in the public interest to reject all bids.

(10) The determination required by 41 U.S.C. 255(c) that the making of advance payments would be in the public interest.

(11) The determination required by § 1-3.807-3(b) of Chapter 1 of this title

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with respect to waiving a requirement for the submission of cost or pricing data and the certification thereof.

(12) To make interagency agreements, which will not require the expenditure of more than \$500,000, under the provisions of section 601 of the Economy Act of 1932, 31 U.S.C. 686, or under any other enabling legislation, for the acquisition of property or services.

(b) The Chief of the Contracts Branch is hereby delegated the authority to make grants (without limitation as to type including grants in aid) under 22 U.S.C. 2571 or, where appropriate, under 42 U.S.C. 1891, which will not require the expenditure of more than \$500,000.

(c) Pursuant to the provisions of § 1-12.805 of Chapter 1 of this title, the Chief of the Contracts Branch is hereby appointed Assistant Contract Compliance Officer for purposes of Equal Opportunity in Employment.

#### § 23-51.203 Contract Specialist.

(a) To the Contract Specialist is delegated the following authority:

(1) Subject to availability of funds, to enter into contracts or contract modifications which will not require the expenditure of more than \$100,000 for the acquisition of property or services following formal advertising.

(2) To make findings and determinations required for the negotiation of individual contracts under the following paragraphs of 41 U.S.C. 252(c):

(i) Paragraphs (2) through (10), inclusively;

(ii) Paragraph (14).

(3) To make class findings and determinations required for the negotiation of contracts under 41 U.S.C. 252(c) (10).

(4) Subject to availability of funds, to enter into negotiated contracts for the acquisition of property or services, and modifications of any kind to such contracts, which will not require the expenditure of more than \$100,000 either for an individual contract or for a contract modification.

(5) To appoint ordering officers under any contract who shall be empowered to place orders, request special responses, or issue technical directions, within the agreed scope of any such contract.

(6) To make final decisions under the Disputes clause contained in any contract, and to terminate the contract, without regard to the total amount of funds in dispute.

(7) To make determinations required by 41 U.S.C. 254(b) as to the estimated cost of, and fees to be paid under, cost-plus-a-fixed-fee contracts.

(8) To make determinations required by 41 U.S.C. 254(b) that the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract is likely to be less costly than other methods or that it is impracticable to secure property or services of the kind and quality required without the use of a cost or cost-plus-a-fixed-fee contract or an incentive-type contract.

(9) To make the determination under 41 U.S.C. 253(b) that it is in the public interest to reject all bids.

(10) The determination required by 41 U.S.C. 255(c) that the making of advance payments would be in the public interest.

(11) The determination required by § 1-3.807-3(b) of Chapter 1 of this title with respect to waiving a requirement for the submission of cost or pricing data and the certification thereof.

(12) To make interagency agreements, which will not require the expenditure of more than \$100,000, under the provisions of section 601 of the Economy Act of 1932, 31 U.S.C. 686, or under any other enabling legislation, for the acquisition of property or services.

(b) (1) The Contract Specialist is hereby delegated the authority to make grants (without limitation as to type including grants in aid) under 22 U.S.C. 2571 or, where appropriate, under 42 U.S.C. 1891, which will not require the expenditure of more than \$100,000.

(2) The foregoing authority may be exercised only by the incumbent of the position.

#### § 23-51.204 Library.

The authority to make minor purchases under 41 U.S.C. 252(c) (3), and to place orders under interagency agreements, for the acquisition of newspapers, books, periodicals, maps, library supplies, and for the acquisition of publication, binding and repair services is hereby delegated to the Chief, Reference Information Center, and to the Librarian. This authority may be exercised only by the incumbents of the positions.

#### § 23-51.205 General Services.

The authority to make minor purchases under 41 U.S.C. 252(c) (3), and to place orders under interagency agreements for the acquisition of office furniture, equipment, and supplies; telephone equipment and services; maintenance, repair, and janitorial services is hereby delegated to the General Services Assistant. This authority may be exercised only by the incumbent of the position.

### PART 23-52—PATENTS, DATA AND COPYRIGHTS

Sec.	
23-52.000	Scope of part.
<b>Subpart 23-52.1—Patents</b>	
23-52.100	Scope of subpart.
23-52.101	Authorization and consent.
23-52.102	Contract clauses.
23-52.102-1	Authorization and consent in contracts for research or development.
23-52.102-2	Authorization and consent in contracts for supplies or services.
23-52.102-3	Patent indemnification.
23-52.103	Notice and assistance regarding patent and copyright infringement.
23-52.104	Patent rights.
23-52.104-1	Policy.
23-52.104-2	Patent rights clause.
23-52.105	Royalties.
<b>Subpart 23-52.2—Data and Copyrights</b>	
23-52.200	Scope of subpart.
23-52.201	Definitions.
23-52.202	Acquisition of rights in subject data.

Sec.

23-52.202-1 Background.

23-52.202-2 Policy.

23-52.203 Contract clauses.

**AUTHORITY:** The provisions of this Part 23-52 are issued under secs. 31, 32, and 41, 75 Stat. 631, 22 U.S.C. 2571, 2572, 2581; sec. 646, 62 Stat. 942, 28 U.S.C. 1498; and sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); as amended.

#### § 23-52.000 Scope of part.

This part sets forth policies, instructions, and contract clauses pertaining to patents, data, and copyrights in connection with the procurement of supplies and services.

#### Subpart 23-52.1—Patents

##### § 23-52.100 Scope of subpart.

This subpart prescribes contract clauses and instructions which define and implement the policy of the U.S. Arms Control and Disarmament Agency with respect to—

(a) Inventions made in the course of experimental, developmental, or research work performed under Government contracts;

(b) Patent infringement liability resulting from work performed by or for the Government;

(c) Royalties payable in connection with the performance of Government contracts;

(d) Security requirements covering patent applications containing classified subject matter filed by the contractors.

##### § 23-52.101 Authorization and consent.

(a) Under 28 U.S.C. 1498, any suit for infringement of a U.S. patent based on the manufacture or use by or for the United States of an invention described in and covered by a patent of the United States by a contractor or by a subcontractor (including lower-tier subcontractors) can be maintained only against the Government in the Court of Claims, and not against the contractor or subcontractor, in those cases where the Government has authorized or consented to the manufacture or use of the patented invention. Accordingly, to insure that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, authorization and consent shall be given as herein provided. The liability of the Government for damages in any such suit against it may, however, ultimately be borne by the contractor or subcontractor in accordance with the terms of any patent indemnity clause also included in the contract, and an authorization and consent clause does not detract from any patent indemnification commitment by the contractor or subcontractor. Therefore, both a patent indemnity clause and an authorization and consent clause may be included in the same contract.

(b) Any provision whereby the Government expressly agrees to indemnify the contractor against liability for patent infringement shall not be included in a contract.

##### § 23-52.102 Contract clauses.

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**§ 23-52.102-1 Authorization and consent in contracts for research or development.**

(a) The clause set forth below shall be used in contracts calling for experimental, developmental, or research work or in contracts for both supplies and experimental, developmental, and research work where the latter work is a primary purpose of the contract.

(b) Clause:

**AUTHORIZATION AND CONSENT**

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

**§ 23-52.102-2 Authorization and consent in contracts for supplies or services.**

(a) The contract clause set forth below shall be used in contracts for supplies or services, or both, which do not include experimental, developmental, or research work as a primary purpose of the contract.

(b) Clause:

**AUTHORIZATION AND CONSENT**

The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

**§ 23-52.102-3 Patent indemnification.**

In appropriate cases a patent indemnity clause for the benefit of the Government shall be included in the contract.

**§ 23-52.103 Notice and assistance regarding patent and copyright infringement.**

(a) Clause:

**NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any

alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) This clause shall be included in all subcontracts.

**§ 23-52.104 Patent rights.****§ 23-52.104-1 Policy.**

(a) Section 32 of the Arms Control and Disarmament Act (22 U.S.C. 2572) requires that all research within the United States contracted for, sponsored, cosponsored, or authorized under authority of the Act shall be provided for in such manner that all information as to uses, products, processes, patents and other developments resulting from such research developed by Government expenditure will (with such exceptions and limitations, if any, as the Director of the Agency may find necessary in the public interest) be available to the general public. The owners of any background patent relating thereto shall not be deprived, under the authority of the Act, of such rights as they may have.

(b) In appropriate cases, the Director may determine to permit the Contractor to obtain title subject to the granting of an irrevocable, royalty-free, nonexclusive, nontransferable license for the practice of a patented discovery or invention by or on behalf of the United States, or by or on behalf of any foreign government or international organization pursuant to any treaty or other agreement with the Government of the United States.

(c) In those cases where the discovery or subject invention relates to atomic energy, the Agency after consulting with representatives of the Atomic Energy Commission will inform the contractor of what rights, if any, he may have under any patent application or patent that may be issued thereon.

**§ 23-52.104-2 Patent rights clause.**

(a) The following clause shall be inserted in all contracts, save in those cases where the Director has made exceptions or has provided for limitations, or which are otherwise exempt under applicable law.

**PATENTS**

(a) The Contractor agrees that it will promptly disclose to the Government all discoveries and inventions conceived or first actually reduced to practice in the performance of the work called for or required under this contract, and that it will, upon request, assign and transfer to the United States, as represented for this purpose by the Agency, full and entire right, title, and interest in and to such discoveries or inventions, subject to the reservation of a nonexclusive and royalty-free license to the Contractor: *Provided, however,* That the Contractor shall not make nor be entitled to (except as the Government in its sole discretion may grant any rights) such reservation as to any discovery

or invention involving production or utilization of special nuclear material or atomic energy within the purview of the Atomic Energy Acts of 1946 and of 1954 (as amended): *And, provided further,* That in the absence of any request by the Agency for such an assignment and transfer of entire right, title, and interest, the Contractor agrees in any event that it will grant an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice throughout the world, by or on behalf of the United States or by or on behalf of any foreign government or international organization pursuant to any treaty or other agreement with the Government of the United States, of each such discovery or invention.

(b) The Contractor warrants that it has or will obtain full authority to effectuate the purposes of paragraph (a) of this clause from all persons who perform any part of the work under this contract, except such clerical and manual labor personnel as will not have access to technical data.

(c) If to the best of the Contractor's knowledge and belief no inventions have been conceived or first actually reduced to practice during and as a result of the performance of the work under this contract, the Contractor shall so certify to the Contracting Officer upon conclusion of the work. Nothing contained in this or any other clause hereof shall be deemed to grant any rights to the Government under any invention other than an invention conceived or first actually reduced to practice during and as a result of the performance of the work under this contract.

(d) Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to those contained in this clause in all subcontracts under this contract.

(e) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Acts of 1946 and of 1954 (as amended) shall be asserted by the Contractor or his employees with respect to any discovery or invention covered by this clause.

(b) In appropriate cases, such as where an industry-wide cross-license is made as a common practice, the clause set forth in paragraph (a) of this section may be amended as a result of the contract negotiations to permit the contractor to reserve to himself a license broad enough to include such cross-licensing.

**§ 23-52.105 Royalties.**

(a) The term "royalties" refers to any costs or charges in the nature of royalties, license fees, patent or license authorization costs, or the like, for the use of or for rights in patents or patent applications.

(b) Cost-type contracts shall include the clause set forth below, unless it has been determined that no royalties are likely to be paid by the contractor.

**ROYALTIES**

Payment by the Contractor of any sum for royalties or for patent rights not included in the ordinary purchase price of standard commercial supplies shall not constitute items of allowable cost hereunder, unless and until approved by the Contracting Officer. Reimbursement to the Contractor on account of any such payments shall not be construed as an admission by the Government of the enforceability, validity or scope of, or title to any of the patents involved, nor shall any such reimbursement constitute a waiver of any rights or defenses respecting such patents.

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**Subpart 23-52.2—Data and Copyrights****§ 23-52.200 Scope of subpart.**

This subpart sets forth policies, instructions, and contract clauses with respect to acquisition of rights in data and copyrights. It relates only to the acquisition of rights in data and does not establish requirements for data.

**§ 23-52.201 Definitions.**

For the purposes of this subpart the following terms have the meanings set forth below:

(a) "Data" means writings, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of similar nature, whether or not copyrighted. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) "Limited rights" means right to use, duplicate, or disclose subject or other specified data in whole or in part by or for the Government, with the express limitation that such data may not be released outside the Government except as may be specifically authorized in the contract or in another writing by the contractor.

(c) "Subject Data" means all writings, technical information, graphic or recorded material; and all information as to uses, products, processes, patents, inventions, and other materials developed under the contract; specified to be delivered under the contract, whether or not copyrighted. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(d) "Unlimited rights" means rights to use, duplicate, or disclose subject or other specified data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

**§ 23-52.202 Acquisition of rights in subject data.****§ 23-52.202-1 Background.**

The Agency has a statutory obligation to insure the acquisition of a fund of theoretical and practical knowledge regarding arms control and disarmament particularly by means of research, development, and other studies. The acquisition of such a fund of knowledge is accomplished in part by contracting for research in a particular field of arms control or of disarmament which results in a final report. These reports, if unclassified or free of information authorized by law to be withheld from the general public, can be made available to the general public either by duplication or publication. Publications can be accomplished by the Government itself, or by Government consent to publication by the contractor. In the light of the foregoing, the need for acquisition of rights in data is clear.

**§ 23-52.202-2 Policy.**

(a) It is the policy of the United States Arms Control and Disarmament Agency

to acquire such data and rights in data as will permit the Agency to fulfill its statutory obligations. Ordinarily these obligations will be satisfied by the acquisition of unlimited rights. However, such unlimited rights are not normally incompatible with retention by the contractor of entitlement to any copyright that he may wish to seek.

(b) Commercial organizations may have a valid economic interest in data they have developed at their own expense for competitive purposes. Such data, particularly data which discloses details of design or manufacture is often closely held because its disclosure to competitors could jeopardize the competitive advantage it was developed to provide. Public disclosure of such data can cause economic hardship to the originating organization.

(c) The Government must not be barred from acquiring such data and such rights therein, limited or unlimited, as it needs even though that data may normally not be disclosed in commercial practice. Moreover, when the Government pays for research and development which produces new knowledge, products or processes, it has an obligation to foster technological progress through wide dissemination of the new and useful information derived from such work and, where practicable, provide competitive opportunities for supplying the new products and utilizing the new processes.

(d) The Government and the contractor may enter into an agreement to be incorporated in the contract which shall list or describe that data which is proprietary and the specific rights therein being acquired by the Government.

**§ 23-52.203 Contract clauses.**

(a) The clause set forth in paragraph (b) shall be inserted in all contracts requiring the delivery of Subject Data. The clause is not applicable to the acquisition of rights in such special works as movies or video tape for television. Normally the Government will acquire all rights and title to such special works and be the sole proprietor.

**(b) Basic subject data clause.****DATA**

(a) The term "Subject Data" as used herein includes all writings, technical information, and graphic or recorded material; and all information as to uses, products, processes, patents, inventions, and other materials (developed under the contract) specified to be delivered under this contract, whether or not copyrighted. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive, and irrevocable license throughout the world to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do, all Subject Data now or hereafter covered by copyright: *Provided*, That with respect to the Subject Data now or hereafter covered by copyright and not originated in the performance of this contract, such license shall be only to the extent that the Contractor, its employees, or any individual or concern specifically employed or assigned by the Contractor to originate and prepare such Data under this

contract, now has, or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(c) The Government may use, duplicate, or disclose in any manner and for any purpose whatsoever, and have others so do, all or any part of the Subject Data delivered by the Contractor to the Government under this contract.

(d) The Contractor shall exert all reasonable effort to advise the Contracting Officer, at the time of delivery of such Subject Data, (1) of any invasions of the right of privacy contained therein and (2) of all portions of such data copied from work not composed or produced in the performance of this contract. The Contractor shall also report to the Contracting Officer, promptly, and in reasonably complete detail, each notice or claim of copyright infringement received by the Contractor with respect to all such Subject Data delivered under this contract.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or any other right otherwise granted to the Government under any patent.

(f) The Government may modify, remove, obliterate, or ignore any marking not authorized by the terms of this contract on any subject data furnished hereunder, if

(1) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the use of the marking; or

(2) The Contractor's response fails to substantiate his contention that the use of the marking is authorized, in which case the Government shall give written notice to the Contractor.

(g) *Inclusion in subcontracts.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions identical to those contained in this clause in all subcontracts under this contract, unless previously authorized in writing by the Contracting Officer to vary the terms of the data clause to be included in the subcontract.

(c) The clause set forth in paragraph (b) of this section may be varied to permit the acquisition of limited rights in data in which an independent and valid proprietary interest exists.

(d) The clause set forth in paragraph (b) of this section may be amended by the addition of the following paragraph where publication by a third party of the subject data of the contract can be anticipated and where the third party will obtain the copyright. The clause, as amended, may be inserted in contracts where such use, in the opinion of the Contracting Officer, would be appropriate.

(h) The Contractor agrees that in the event of (1) an assignment of his rights in copyrighted matter hereunder to any third party or (2) an assignment of rights in the subject data to any third party pursuant to which the assignee may secure a statutory copyright in his own name, the Contractor shall include in any such assignment provisions protecting the Government's rights in the subject data. Accordingly, the Contractor will not grant an exclusive license to the copyrighted matter to any third party, or assign the copyright to any third party without exempting therefrom and confirming therein the Government's existing license. In the event of the assignment of the Contractor's rights in the subject data hereunder which are not yet copyrighted, the Contractor will include provisions pur-

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suant to which the assignee (i) will be notified of the Government's existing rights in the subject data under this contract and in addition, (ii) shall be obligated upon the issuance of any copyright to send to ACDA written confirmation of the Government's license to the copyrighted matter. This obligation of the Contractor to protect in any assignment the rights of the Government shall survive the expiration of the contract.

The foregoing Parts 23-1, 23-3, 23-4, 23-7, 23-51, and 23-52 of this Chapter 23 of Title 41 of the Code of Federal Regulations shall become effective on the date of their publication in the FEDERAL REGISTER.

Dated: December 18, 1968.

WILLIAM C. FOSTER,  
*Director.*

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